

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEARL FLOWERS,	§
	§ No. 33, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1008025982
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 20, 2012

Decided: September 5, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 5th day of September 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Gearl Flowers, acting *pro se*,¹ filed an appeal from his January 25, 2011 Superior Court convictions. For the reasons that follow, we conclude that the Superior Court's judgments should be affirmed.

¹ Flowers filed an affidavit in this Court requesting that his counsel be permitted to withdraw and that he be permitted to represent himself in his direct appeal. Supr. Ct. R. 26(d) (iii). Following a hearing in the Superior Court in which Flowers was found to have voluntarily waived his right to counsel, this Court granted Flowers' request to represent himself in his direct appeal. *Flowers v. State*, Del. Supr., No. 33, 2012, Berger, J. (Apr. 10, 2012).

(2) In October 2010, Flowers was indicted on charges of Burglary in the Third Degree, Theft and Criminal Mischief. In January 2011, Flowers went to a jury trial and was convicted of Burglary in the Third Degree and Theft.² Flowers was sentenced to a total of four years of Level V incarceration, to be suspended after two years and six months for Level III probation.

(3) The following evidence was presented at trial. In the early morning of August 31, 2010, the executive director of Congregation Beth Shalom in Wilmington, Delaware, received a call alerting him that the alarm in the basement of the synagogue had sounded. When he arrived at the synagogue, two officers with the City of Wilmington Police Department were already on-site. As the group entered the building, they heard someone running down the back steps near the kitchen in the direction of an exit door. After one of the police officers received a message that someone had been taken into custody outside the building, the group went back outside and saw that another officer had a man, later identified as Gearl Flowers, in custody. Inside Flowers' backpack were several sets of headphones, which were later identified as belonging to the synagogue.

² Between trial and sentencing, Flowers, acting *pro se*, filed motions for a new trial and for postconviction relief in which he alleged that he personally knew two of the jurors and that both were biased against him. Following two evidentiary hearings, the Superior Court concluded that Flowers' claim was meritless.

(4) In this appeal from his convictions, Flowers claims that a) he was denied his right to six peremptory challenges during jury selection; b) two of the jurors were biased against him; and c) the trial judge was biased against him.

(5) Flowers' first claim is that he was denied his right to six peremptory challenges during jury selection. Underlying Flowers' claim is his apparent belief that parties are required to exercise six peremptory challenges at a criminal jury trial in the Superior Court. Flowers' belief is incorrect. Pursuant to Superior Court Criminal Rule 24(b), the State and the defendant each may make as many as six peremptory challenges to prospective jurors. There is no requirement that all six challenges be exercised. In this case, the trial transcript reflects that the defense did not exercise any peremptory challenges and instead indicated that it was content with the jury panel. There was nothing improper in so doing. The trial transcript further reflects that the Superior Court followed all proper procedures during jury selection. We, therefore, conclude that Flowers' first claim is without merit.

(6) Flowers' second claim is that two of the jurors who sat on his case were biased against him. The record in this case reflects that, following his convictions and prior to sentencing, Flowers filed motions for a new trial

and for postconviction relief. In his motions, Flowers claimed that two jurors were personally known to him and were biased against him. The Superior Court then held two evidentiary hearings to determine if there was any factual basis for Flowers' claims. Based on the record developed at the two hearings, the Superior Court determined that there had been no defect in the composition of the jury and no reason to disturb the jury's verdict. Based upon the Superior Court's findings following two evidentiary hearings, there is no factual support for Flowers' claim of juror bias. We, therefore, conclude that Flowers' second claim is without merit.

(7) Flowers' third, and final, claim is that the trial judge was biased against him and should have recused herself. As grounds for his claim, Flowers cites to the judge's denial of his various motions. In order to succeed on his claim of bias, Flowers must demonstrate that the judge had a personal, rather than a judicial, bias against him.³ The fact that a judge has made rulings adverse to a party is not, in and of itself, evidence of bias.⁴ We have reviewed the record in this case, including the trial transcript and find no evidence to support Flowers' claim of bias on the part of the Superior Court judge. We, therefore, conclude that Flowers' third claim also is without merit.

³ *Los v. Los*, 595 A.2d 381, 384 (Del. 1991).

⁴ *Petition of Wittrock*, 649 A.2d 1053, 1054 (Del. 1994).

NOW, THEREFORE, IT IS ORDERED that the judgments of the
Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice